

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

MELTON PROPERTIES, LLC, et al.

PLAINTIFFS

V.

NO. 4:18-CV-79-DMB-JMV

**ILLINOIS CENTRAL RAILROAD
COMPANY, et al.**

DEFENDANTS

ORDER

On August 23, 2018, Canadian National Railway Company filed a motion to dismiss the claims brought against it for lack of personal jurisdiction and for failure to state a claim. Doc. #31. Eight days later, the plaintiffs filed a motion seeking leave to conduct jurisdiction-related discovery on the issues raised by the motion to dismiss. Doc. #35. On September 19, 2018, United States Magistrate Judge Jane M. Virden granted the parties sixty days for jurisdictional discovery. Doc. #40.

Generally, where jurisdictional discovery has been ordered on a pending motion to dismiss for lack of jurisdiction, the proper course is to deny the jurisdictional motion without prejudice, subject to refile at the close of discovery. *See, e.g., Katz v. Princess Hotels Int'l, Inc.*, 839 F.Supp. 406, 411 (E.D. La. 1993) (denying motion to dismiss without prejudice based on grant of jurisdictional discovery); *Shell Offshore, Inc. v. Freeport-McMoRan Oil & Gas, LLC*, No. 17-9695, 2018 WL 2970876, at *5 (E.D. La. June 13, 2018) (same). Further, because as a general rule, “courts must evaluate a motion to dismiss for lack of ... personal jurisdiction prior to considering a motion to dismiss for failure to state a claim,” *Terry v. Dewine*, 75 F.Supp.3d 512, 520 (D.D.C. 2014); it follows that a pending motion to dismiss for failure to state a claim should also be denied without prejudice when the jurisdictional basis for dismissal is denied without

prejudice. Accordingly, in light of the ongoing jurisdictional discovery, Canadian National's pending motion to dismiss [31] is **DENIED without prejudice**. Canadian National may refile its motion within twenty-one (21) days of the close of jurisdictional discovery.

SO ORDERED, this 19th day of October, 2018.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE